

ESTTA Tracking number: **ESTTA410236**Filing date: **05/20/2011**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Deutsche Bank AG		
Entity	Corporation	Citizenship	Germany
Address	60 Wall Street New York, NY 10005 UNITED STATES		

Attorney information	Catherine S. Gratton, Esq. Deutsche Bank AG 60 Wall Street 37th Floor New York, NY 10005 UNITED STATES catherine.gratton@db.com Phone:212.250.9696
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Registration Subject to Cancellation

Registration No	3928149	Registration date	03/08/2011
Registrant	Moehn Management 2961-A Hunter Mill Road, Box 617 Oakton, VA 22124 UNITED STATES		

Goods/Services Subject to Cancellation

Class 036. First Use: 2009/07/00 First Use In Commerce: 2009/08/29
All goods and services in the class are cancelled, namely: Student loan services and providing information about student loans

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	ALPS		
Goods/Services	Student loan services and providing information about student loans		

Attachments	alpscancel1.pdf (5 pages)(689000 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/catherine s. gratton/
Name	Catherine S. Gratton, Esq.
Date	05/20/2011

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Registration No. 3,928,149

Mark: ALPS

Issued: March 8, 2011;

Deutsche Bank AG,
Petitioner

v.

Moehn Management,
Registrant.

Cancellation No. _____

PETITION FOR CANCELLATION

Deutsche Bank AG (“Petitioner”), a bank organized under the laws of Germany, acting through its New York branch, having a place of business at 60 Wall Street, New York, New York 10005, believes that it is damaged by Registration No. 3,928,149 for ALPS, and hereby petitions to cancel the same under 15 U.S.C. § 1064.

As grounds for cancellation, Petitioner alleges:

1. Petitioner adopted the ALPS trademark for use in connection with a student loan program that enables schools to address the financing needs of students who are unable to obtain financing through other alternative loan programs.
2. Petitioner offered the ALPS program in commerce at least as early as May 2009.
3. Following the adoption and use of the ALPS trademark by Petitioner, Petitioner engaged Moehn Management (“Registrant”) to manage Petitioner’s student loan program. The agreement provided that all intellectual property of Petitioner, including the ALPS trademark,

remained under the ownership and control of Petitioner. The agreement was signed by Kevin Moehn, the CEO of Registrant ("Mr. Moehn").

4. Notwithstanding Registrant's contractual obligations to Petitioner with respect to the ALPS trademark, Registrant filed U.S. Serial No. 85/051,617 to register the mark ALPS in its name on June 1, 2010 for Class 36 "student loan services and providing information about student loans." Based on this application, Registrant obtained U.S. Registration No. 3,928,149 for the ALPS mark on March 8, 2011.

5. On April 30, 2011, the parties' agreement for the administration of the student loan services under the ALPS trademark terminated.

Grounds for Cancellation -- Fraud

6. The agreement with Petitioner prohibits Registrant from seeking ownership in the ALPS trademark, or any other intellectual property owned by Petitioner.

7. The agreement further prohibits Registrant from using the ALPS trademark after the agreement terminated on April 30, 2011.

8. Registrant filed the application to register the ALPS mark on June 1, 2010. A sworn declaration signed under the penalty of perjury by Mr. Moehn was submitted in connection with Registrant's response to an office action. The declaration was signed on October 17, 2010.

9. Mr. Moehn swore that he believed Registrant "to be the owner of the service mark sought to be registered" and "to the best of [Mr. Moehn's] knowledge and belief no other person, firm, corporation or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or to cause mistake, or to deceive." Upon information and belief, such statements were false at the time they were made.

10. In connection with the application, Registrant submitted a specimen of use consisting of “a copy of a flyer” that described the student loan program services offered by Petitioner, not Registrant.

11. Upon information and belief, Registrant knew that its statements regarding ownership of the ALPS trademark were false at the time such statements were made.

12. Upon information and belief, Registrant knew that the specimen of use that it submitted was not a specimen reflecting its services, but rather a specimen reflecting the services offered by Petitioner.

13. The U.S. Patent and Trademark Office relied upon Registrant’s material false statements and false specimen in allowing the registration of the ALPS mark. The U.S. Patent and Trademark Office would not have issued Registration No. 3,928,149 absent Registrant’s knowingly false statements and false specimen.

Grounds for Cancellation - Likelihood of Confusion

14. Petitioner has continuously and exclusively used the ALPS mark in connection with its student loan services prior to Registrant’s first use in commerce date of August 29, 2009. As such, priority is not an issue in this proceeding.

15. The ALPS mark is recognized and relied upon by the relevant consumers as identifying Petitioner’s services and as distinguishing them from the services of others, and has come to represent and symbolize extremely valuable goodwill belonging exclusively to Petitioner.

16. Petitioner has spent substantial time, effort and money promoting the services offered under the ALPS mark.

17. Petitioner’s ALPS mark is inherently distinctive.

18. Petitioner's ALPS mark and Registrant's ALPS mark are identical in sound, appearance, meaning and commercial impression.

19. Registrant uses its ALPS mark in connection with services that are identical to those offered under Petitioner's ALPS mark, and markets and promotes its services through the same channels of trade and to the same consumers as Petitioner.

20. Registrant's use of the ALPS mark is likely to cause consumer confusion, mistake or deception with consequent injury to Registrant and the public. Use of such mark will likely lead to the mistaken belief that Registrant's services originate with, are affiliated with, or are sponsored or approved by Petitioner. Therefore, U.S. Registration No. 3,928,149 is a source of damage and injury to Petitioner.

WHEREFORE, Petitioner requests that its petition to cancel Registration No. 3,928,149 be sustained and that the Trademark Trial and Appeal Board grant any and all further relief to Petitioner that the Board finds necessary and just in the circumstances.

All correspondence should be addressed to Catherine S. Gratton, Esq.

Date: May 20, 2011

Respectfully submitted,

DEUTSCHE BANK AG NEW YORK

By: 

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Petition to Cancel was served on Registrant by first class mail on May 20, 2011 as follows:

SCOTT J. MAJOR
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ARLINGTON, VA 22201-3379



Catherine Gratton